

[\*Macktal v. Brown & Root\*](#), 86-ERA-23 (Sec'y May 11, 1987)

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U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR  
WASHINGTON, D.C.

DATE: May 11, 1987  
CASE NO. : 86-ERA-23

IN THE MATTER OF

JOSEPH MACKTAL  
, COMPLAINANT,

v.

BROWN & ROOT, INC.,  
RESPONDENT,

BEFORE: THE SECRETARY OF LABOR

ORDER TO SUBMIT SETTLEMENT AGREEMENT

This proceeding arises under the employee protection provision of the Energy Reorganization Act of 1974 (ERA), 42 U.S.C § 5851 (1982), and implementing regulations at 29 C.F.R. Part 24 (1986).

This case is before me on the recommended Order of Administrative Law Judge (ALJ) Vivian Schreter Murray issued on January 6, 1987. The order states that the parties to this action have jointly moved, pursuant to 29 C.F.R. § 18.39(b), for dismissal of this action with prejudice. Section 24.6 of 29 C.F.R. authorizes the administrative law judge to issue a recommended decision

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after the termination of the proceeding. The recommended decision is to be forwarded to the Secretary of Labor for approval and a final order.

The record reflects that considerable discovery was conducted in this case prior to the hearing which apparently was scheduled in November of 1986. Correspondence in the record from Complainant's counsel dated December 10, 1986, refers to "agreements of last month." Thus it appears that some agreement between the parties underlies the joint motion to dismiss, although no settlement agreement, stipulation or similar document has been included in the record submitted to the Secretary.

Although it is not necessary that the settlement agreement be made part of my final order, without an opportunity to review the agreement I cannot determine if the terms of the settlement are fair, adequate and reasonable, the usual standard for approval of a settlement agreement. *Johnson v. Transco Products*, Case No. 85-ERA-7, slip op. at 1, August 8, 1985. *Compare Young v. Hake*, Case No. 83-ERA-11, slip op., January 18, 1985 ("fair and equitable"); *Eggers v. Cincinnati Drum Services, Inc.*, Case No. 84-TSC-2, slip op. of ALJ, March 6, 1984 ("reasonable and proper and that a dismissal is not against the public interest"), approved by the Secretary, June 5, 1984; and *Chan Van Vo v. Carolina Power & Light Company*, Case No. 85-ERA-3, slip op. April 12, 1985 ("equitable"). Where a settlement is not fair and equitable to a complainant, I cannot approve it for to do so would be an abdication of the responsibility imposed upon me by Congress to effectuate the purpose of Section 5851, which is to encourage the reporting of safety violations by prohibiting economic retaliation against employees reporting such violations. *McGavock v. Elbar, Inc.*, Case No. 86-STA-5, Secretary's Order, at 2, November 25, 1986.

Therefore, if the parties desire to resolve this matter by mutual agreement, within 30 days from receipt of this order they should submit the settlement agreement for my review, signed by both parties, including Complainant individually and setting forth all the terms and conditions agreed to.

SO ORDERED.

Secretary of Labor

Washington, D.C.